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August 12, 2016

**VIA E-MAIL**

Joint Legislative Commission on Governmental Operations  
Commission Assistant  
Fiscal Research Division

RE: *Request for consultation by North Carolina State Board of Examiners in  
Optometry pursuant to North Carolina General Statutes section 12-3.1.*

Dear Ladies and Gentlemen:

I represent the North Carolina State Board of Examiners in Optometry (the Board). I write to submit this request for consultation under G.S. 12-3.1 regarding a proposed rule change by the Board that will bring the Board's fees authorized by rule into line with the fees authorized by statute. Following is the information required under G.S. 12-3.1.

**Amount of the current fee or charge.** The current Board rule setting fees that may be charged by the Board is 21 NCAC 42J .0101, a copy of which is attached as **Exhibit 1**. That rule was last amended in 1994.

**The amount of the proposed new or increased fee or charge.** The proposed changes to 21 NCAC 42J .0101 are shown in yellow highlighting on the document attached as **Exhibit 2**.

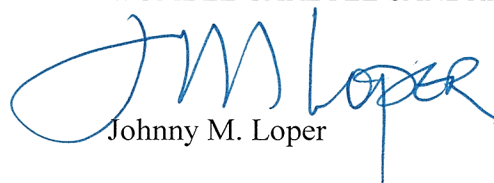
**The statutory authority for the fee or charge.** The fee changes requested in the proposed amended rule are those fees authorized by G.S. 90-123, which was last amended effective January 1, 2002. (See copy attached as **Exhibit 3**.) G.S. 90-123 therefore contains the authority for the Board to charge the amounts contained in the proposed rule. However, the Board amended the statute at that time to give itself "fee headroom." It did not intend to – and it did not begin to – charge those fees at that time. I believe that our Board is one of very few boards (and perhaps the only one) that chose to operate in this manner – seeking and receiving statutory authority for additional fees but charging lower fees until a fee increase became absolutely necessary.

**Explanation of the need for increase in the subject fees.** As indicated above, the Board has managed its operations so as to avoid seeking authority to amend its fee rule to charge the fees authorized by G.S. 90-123 for over fourteen years. However, the Board's costs and expenses have increased by approximately 80% since 2002. The number of licensees administered by the Board has risen from approximately 800 in 2002 to approximately 1350 today. The expense of developing and administering the Board's twice-yearly clinical-practical exam likewise has increased: it now costs the Board about twice as much to administer these examinations as the Board collects in fees from the examination applicants. The Board has computerized and otherwise modernized its recordkeeping, including its licensing and continuing education documentation, as well as many facets of its licensing examination process and its exam database – all of which has caused a corresponding increase in computer software purchases and programmer fees (\$16,000 in 2002, \$90,000 in 2015). Increased scrutiny on all professional licensing boards in the wake of the United States Supreme Court decision in *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, and the related inquiries made by the General Assembly Program Evaluation Division and the Administrative Procedures Oversight Committee, and requests from individual legislators have required additional work by the Board's attorney and have increased legal fees substantially in recent years. Other expenses also have been incurred as an indirect result of the *Dental Board v. FTC* case (e.g., additional training of Board members, reworking the Board website to allow on-line filing of complaints, and the decision to purchase costly D & O insurance). Various other expenses also have increased. In the fiscal year ended June 30, 2015 (the 2016 fiscal year financial statements are not yet available), the Board had a loss from operations of almost \$55,000. The Board has held the line on expenses and fees as long as possible. The Board needs to amend its fee rule to authorize it to charge the fee amounts the General Assembly authorized the Board to charge over 14 years ago in order to not incur further operating losses.

Accordingly, the Board submits this request for consultation regarding its proposed amended rule providing for changes in fees charged by the Board up to the amounts authorized by the General Assembly when it amended G.S. 90-123 effective January 1, 2002. If you need additional information or explanation, please contact me.

Sincerely,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP



Johnny M. Loper

JML:mwg

Attachments

# Exhibit 1

## SUBCHAPTER 42J - FEE SCHEDULE

### 21 NCAC 42J .0101 FEES

The Board hereby establishes the following fees:

- (1) Each application for general optometry examinations \$400.00
- (2) Each general optometry license renewal \$245.00
- (3) Each certificate of license to a resident optometrist desiring to change to another state or territory \$200.00
- (4) Each license issued to a practitioner of another state or territory to practice in this state \$250.00
- (5) Each license to resume practice issued to an optometrist who has retired from the practice of optometry or who has moved from and returned to this state \$250.00
- (6) Each application for registration as an optometric assistant or renewal thereof \$ 50.00
- (7) Each application for registration as an optometric technician or renewal thereof \$ 50.00
- (8) Each duplicate license \$ 50.00
- (9) Each renewal license for each branch office \$ 45.00
- (10) Each certificate of registration for a professional corporation or limited liability company \$ 50.00
- (11) Each renewal certificate of registration for a professional corporation or limited liability company \$ 25.00

*History Note:* Authority G.S. 55B-10; 55B-11; 57C-2-01; 90-117.5; 90-123;  
Eff. June 1, 1989;  
Amended Eff. October 1, 1994; March 1, 1992;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

## Exhibit 2

21 NCAC 42J .0101 is amended with changes as proposed in 30:03 NCR 298 as follows:

## SUBCHAPTER 42J - FEE SCHEDULE

### 21 NCAC 42J .0101 FEES

The Board hereby establishes charges the following fees:

- (1) Each application for general optometry examinations ~~\$400.00~~\$800.00
- (2) Each general optometry license renewal ~~\$245.00~~\$300.00
- (3) Each certificate of license to a resident optometrist desiring to change to another state or territory  
~~\$200.00~~\$300.00
- (4) Each license issued to a practitioner of another state or territory to practice in this state ~~State~~  
~~\$250.00~~\$350.00
- (5) Each license to resume practice issued to an optometrist who has retired from the practice of  
optometry or who has moved from and returned to this state ~~State~~ ~~\$250.00~~\$350.00
- (6) Each application for registration as an optometric assistant or renewal thereof ~~\$50.00~~\$100.00
- (7) Each application for registration as an optometric technician or renewal thereof ~~\$50.00~~\$100.00
- (8) Each duplicate license ~~\$ 50.00~~\$100.00
- (9) Each renewal license for each branch office ~~\$ 45.00~~\$100.00
- (10) Each certificate of registration for a professional corporation or limited liability company \$50.00
- (11) Each renewal certificate of registration for a professional corporation or limited liability  
company \$25.00

*History Note: Authority G.S. 55B-10; 55B-11; ~~57C-2-01~~; 57D-2-02; 90-117.5; 90-123;*

*Eff. June 1, 1989;*

*Amended Eff. October 1, 1994; March 1, 1992;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23,  
2015;*

*Amended Eff. September 1, 2016.*

# Exhibit 3

West's North Carolina General Statutes Annotated
Chapter 90. Medicine and Allied Occupations (Refs & Annos)
Article 6. Optometry

N.C.G.S.A. § 90-123

§ 90-123. Fees

Currentness

In order to provide the means of carrying out and enforcing the provisions of this Article and the duties of devolving upon the North Carolina State Board of Examiners in Optometry, the Board is authorized to charge and collect the following fees:

- (1) Each application for general optometry examination ..... \$800.00
- (2) Each general optometry license renewal, which fee shall be annually fixed by the Board, and not later than December 15 of each year written notice of the amount of the renewal fee shall be given to each optometrist licensed to practice in this State by mailing the notice to the last address of record with the Board of each such optometrist..... 300.00
- (3) Each certificate of license to a resident optometrist desiring to change to another state or territory ..... 300.00
- (4) Each license issued to a practitioner of another state or territory to practice in this State..... 350.00
- (5) Each license to resume practice issued to an optometrist who has retired from the practice of optometry or who has removed from and returned to this State ..... 350.00
- (6) Each application for registration as an optometric assistant or renewal thereof ..... 100.00
- (7) Each application for registration as an optometric technician or renewal thereof..... 100.00
- (8) Each duplicate license or renewal thereof for each branch office ..... 100.00.

Credits



**§ 90-123. Fees, NC ST § 90-123**

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Amended by Laws 1959, c. 477; Laws 1969, c. 624; Laws 1973, c. 1092, § 2; Laws 1979, c. 771, §§ 1, 2; Laws 1981, c. 909; Laws 1987, c. 645, § 1; [S.L. 2001-493, § 2, eff. Jan. 1, 2002](#).

N.C.G.S.A. § 90-123, NC ST § 90-123

The statutes and Constitution are current through the end of the 2015 Regular Session and through 2016-50 of the 2016 Extra and Regular Sessions of the General Assembly.

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